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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

LITTLE MOUNTAIN ESTATES  
TENANT ASSOCIATION, et al.,

Respondents,

v.

LITTLE MOUNTAIN ESTATES MHC LLC, et al.,

Petitioner.

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PETITION FOR REVIEW

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## I. IDENTITY OF PETITIONER

The petitioners are Little Mountain Estates MHC LLC, Peregrine Holdings LLC, and Kevin and Kari Ware, collectively defendants below and respondents in the Court of Appeals. Little Mountain is a Washington corporation that owns and operates a manufactured housing community. Peregrine Holdings and the Wares are prior owners of the community.

## II. DECISION BELOW

The Court of Appeals' unpublished decision was filed on July 21, 2008 and is set forth in the Appendix at pages A-1 through A-16. The Court of Appeals granted Little Mountain's timely motion for publication on September 15, 2008. The order publishing the opinion is in the Appendix at page A-17.

## III. ISSUES PRESENTED FOR REVIEW

A. Under the Manufactured/Mobile Home Landlord Tenant Act (MHLTA) may parties agree to modify the lease term upon assignment to a third party, provided the pre-assignment and post-assignment lease terms comply with all provisions of the MHLTA?

B. Does a 25-year rent-controlled lease violate the letter or policy of the MHLTA's provision on assignability, because it provides a one- or two-year lease term upon transfer?

C. Under the common law of contracts, may parties agree to a contractual provision that is not illegal and does not violate public policy?

D. Does RCW 59.20.073 as applied by the Court of Appeals violate article I, § 16 of the Washington Constitution?

#### IV. STATEMENT OF THE CASE

Little Mountain Estates is an upscale manufactured home park. The manufactured homes installed there are pit set and landscaped so that home values increase, not decrease as in many traditional mobile home parks. The park has a clubhouse, swimming pool, recreational facilities, and a gated entrance. According to the tenants' own expert below, Little Mountain Estates is a park of superior quality to other local parks.

##### (1) Little Mountain's Loss Leader 25-Year Leases

When Little Mountain was first being developed in 1990-91, it struggled for tenants because of unstable economic and political factors, including high interest rates and uncertainty caused by war with Iraq over the invasion of Kuwait. To counteract this problem, Little Mountain offered a 25-year rent-controlled lease in an attempt to attract business.

The 25-year lease was to be a "loss leader", which means "an item priced not for profit, but to attract customers." Investor Glossary, <http://www.investorglossary.com/loss-leader.htm>. The 25-year leases were rent controlled; rent increases were tied to the Consumer Price Index

(CPI). Rent under the 25-year leases was below cost, and did not even meet the basic operating expenses of the park. From its inception in 1992, the unprofitable 25-year rent controlled lease was assignable as required by the MHLTA. But Little Mountain could not afford to offer this 25-year lease term in perpetuity, so they included a provision converting the lease to a one- or two-year term upon assignment. In this way, Little Mountain could offer an attractive deal to tenants during a difficult downturn: an unheard of 25-year rent controlled lease keyed to the CPI, but eventually be able to meet operating expenses.

In other words, this excellent deal was for original tenants only, in exchange for an agreement that the special lease terms would apply only to them. If those tenants chose to leave and give up the 25-year rent controlled lease, assignees would receive a standard MHLTA lease agreement. The park could eventually earn enough rent to keep operating.

(2) The Tenants Had Ample Opportunity to Review Lease, and Had Power to Negotiate Terms, Before and After Move-In

The 25-year lease contained ¶ 6, which read: "ASSIGNMENT; SUBLETTING: This lease is assignable, providing that such assignment conforms with the limitations and language in Attachment 'B.' Subletting the manufactured home, the lot space, or any part thereof is not permitted." Attachment B was a brief paragraph containing clear

notification of the conversion of the 25-year lease to a one- or two-year term upon assignment. Advertisements mentioning the 25-year lease never claimed that the balance of the 25 years was transferable upon assignment, and referred potential tenants to the lease for details. Every tenant who received the 25-year lease was subject to the assignment clause restriction, including predecessor owners Kevin and Kari Ware.

The tenants had ample opportunity to review the written lease before committing to buy and install a home. Far from concealing this beneficial lease from potential tenants, Little Mountain prominently displayed copies of the lease in the park's clubhouse, and included it in advertising materials. Kevin Ware said of the 25-year leases, "We would have put them as wallpaper in the bathroom if we could have."

Despite ready availability of the written lease and reference to it in advertising materials, most tenants did not inquire about the lease until after move-in, and did not object to the language converting the 25-year lease to one year upon assignment when presented with it. Most of the tenants who testified said that the language was part of the lease they agreed to, or that they did not pay attention.

It also made economic sense that most tenants did not sign a lease until after move-in, because their \$250 deposit held a lot for six months,

and to sign a lease early would create an obligation to begin paying rent before they could occupy the property.

The tenants had bargaining power over Little Mountain. Some tenants successfully renegotiated provisions of their leases after move in. For example, Donald Dykstra had to build a longer driveway than other residents, and demanded reimbursement from Little Mountain for the increased cost. Although Dykstra had assumed responsibility for installing his own driveway under the lease, Little Mountain reimbursed him \$1,000. After Wes Walton had moved his home onto a lot, he went to the manager to sign his lease. The manager told him that there were no 25-year leases available, only one-year leases. Walton insisted that he should receive a 25-year lease; Little Mountain agreed and gave him one.

Judge Kenneth Cowsert held a bench trial and concluded that the lease was valid and enforceable, and that Little Mountain did not violate the MHLTA. The tenants appealed, and the Court of Appeals Division I reversed. The Court held that the clause converting the lease term to one year on assignment violated the MHLTA. In its decision, the Court of Appeals reasoned that (1) RCW 59.20.073 requires MHLTA leases to be assignable, and (2) "assignable means conferring all of the exact same terms as were conferred upon the assignor," and (3) if a lease contains any provision modifying the lease term upon assignment, then it is not

“assignable” under the MHTLA, and (4) the tenants should have been asked to affirmatively waive their right to assignment. Therefore, the Court concluded that the provision converting the lease to a one-year term upon assignment violated the MHTLA. Slip op. at 11-12.

#### V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

In recent years, the topic of manufactured housing community regulation has been frequently addressed by this Court and lower courts. *Holiday Resort Community Ass'n v. Echo Lake Associates, LLC*, 134 Wn. App. 210, 135 P.3d 499 (2006); *Hartson Partnership v. Martinez*, 123 Wn. App. 36, 96 P.3d 449 (2004); *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672 (2001); *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000); *White River Estates v. Hiltbruner*, 134 Wn.2d 761, 953 P.2d 796 (1998).

This Court in *Manufactured Housing* and *White River* attempted to strike a sensible balance between important protections for tenants of manufactured and home parks, and the economic realities of trying keep such parks in business. Indeed, the first Court of Appeals’ decision which followed *Manufactured Housing* and *White River* recognized a similar practical approach to reviewing mobile home matters in *McGahuey*, but Division I has recently declined to follow that policy in *Holiday Resort* and *Little Mountain*, and instead seeks to rewrite the MHTLA.

This case presents a situation in which a landlords' innovative and legal attempt to strike the same kind of positive balance between tenants and landlords was overturned by the Court of Appeals. Little Mountain offered to tenants excellent lease terms that far exceeded the Legislature's intent when drafting the MHLTA: a 25-year rent controlled lease tied to the Consumer Price Index. In exchange, the tenants agreed that this generous lease term would apply only to them, and if they chose to assign it, the lease would revert to the standard one-year MHLTA term. In this way, the landlords could offer stable, affordable housing to attract tenants, but eventually earn enough in rent to keep the park viable. However, the Court of Appeals invalidated the provision as contrary to the MHLTA.

In this case of first impression on an issue of broad public import, the Court of Appeals misinterpreted the MHLTA and contradicted well-settled case law regarding the common law of contracts. This Court should accept review to provide guidance to lower courts, parties, and the public regarding whether parties should be free to enter into legal and mutually advantageous MHLTA contracts. Indeed, if the words "[u]nless otherwise agreed" in RCW 59.20.090(1) is the nullity which the Court of Appeals makes it out to be under RCW 59.20.073, then the entire state should be so nullified because any common reading of these statutes

would not preclude a landlord from offering a 25-Year Lease that converts to a one or two year term upon the tenant's sale of the home.

(1) It Is Well-Settled That Agreed-Upon Contractual Provisions Are Enforceable Unless They Are Illegal or Against Public Policy

The Court of Appeals' opinion conflicts with the general and well-settled rule of contract interpretation that "parties to a contract may incorporate into that contract any provision that is not illegal or against public policy." 25 Wash. Prac., Contract Law and Practice § 7:1, citing *Redford v. City of Seattle*, 94 Wn.2d 198, 615 P.2d 1285 (1980) and *Car Wash Enterprises, Inc. v. Kampanos*, 74 Wn. App. 537, 874 P.2d 868 (1994). See also, *Coast Sash & Door Co. v. Strom Const. Co.*, 65 Wn.2d 279, 396 P.2d 803 (1964); *Schrock v. Gillingham*, 36 Wn.2d 419, 430, 219 P.2d 92 (1950); *Motor Contract Co. v. Van Der Volgen*, 162 Wash. 449, 453, 298 P. 705, 79 A.L.R. 29 (1931).

Even when the subject matter of a contract is governed by a statutory scheme, parties may agree to contract provisions that are neither addressed in nor prohibited by the statute. In *Car Wash*, two potentially responsible parties were involved a Model Toxics Control Act (MTCA) cleanup contribution dispute. 74 Wn. App. at 540. Although the MTCA expressly stated that all responsible parties were jointly and severally liable for cleanup costs, the two parties privately agreed to allocate their

liability. *Id.* at 543. The Court of Appeals initially concluded that the contract was void because the MTCA did not expressly permit private agreements to reallocate MTCA liability. *Id.*

But then the court reversed itself on reconsideration, reasoning that the MTCA did not prohibit such agreements:

In the absence of express statutory language evidencing a legislative intent to prohibit agreements in which private parties allocate the risk of MTCA liability between themselves, we conclude that such agreements are not prohibited under the MTCA.

*Id.* at 544. In other words, if the statute does not expressly prohibit a contract provision, and the provision is otherwise permissible under the common law of contracts, then the provision will be upheld.

Courts will uphold lawful agreements that parties make with each other. *Dix Steel Co. v. Miles Const., Inc.*, 174 Wn.2d 114, 443 P.2d 532 (1968). The only way that the tenants should have been able to prevail on appeal was by demonstrating that an agreement to modify the generous 25-year rent-controlled lease term to a standard lease term upon assignment was illegal or violated public policy under the MHLTA. They did not bear this burden. Nothing in the MHLTA prohibits the type of provision at issue; the Court of Appeals erred in concluding otherwise.

- (2) An Agreement to Modify the Length of the 25-Year Lease to One- or Two-Years in the Event of Assignment Does Not Violate Any Provision of the MHLTA

All rental agreements between manufactured home parks and their tenants must comply with the MHLTA, and all such agreements “shall be unenforceable to the extent of any conflict with any provision of this chapter.” RCW 59.20.040. Logically, the converse is true: an agreement that does not conflict with any provision of the chapter is enforceable.

No provision of the Act prohibits landlords and tenants from negotiating mutually beneficial provisions not covered by the Act. Specifically, nothing in the MHLTA expressly prohibits parties from modifying the lease term upon assignment. Regarding assignability, the MHLTA requires that leases “shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model.” RCW 59.20.073. The statute goes on to describe the landlord’s right to disapprove prospective assignees. *Id.*

The MHLTA does not define the term “assignable” in RCW 59.20.073. The Court of Appeals acknowledged this fact, and resorted to common law contractual principles to elucidate the term.<sup>1</sup> Under *Federal Fin. Co. v. Gerard*, 90 Wn. App. 169, 177, 949 P.2d 412 (1998) and *Puget Sound Nat’l Bank v. State Dep’t of Revenue*, 123 Wn.2d 284, 292, 868

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<sup>1</sup> However, the Court of Appeals rejected Little Mountain’s similar attempt to use common law contract principles here, arguing that such interpretation “ignored” the MHLTA. Slip. op. at 11.

P.2d 127 (1994), the Court of Appeals concluded that an assignee has all of the right of the assignor, and that under the MHLTA the tenants had the right to assign the remaining term of the 25-year lease. Slip op. at 12.

However, *Gerard* and *Puget Sound* do not stand for the proposition that a contract is only “assignable” if there are no modifications to the contract terms upon assignment. The cases merely define the term “assignment” and describe the effect of a standard assignment agreement. *Gerard*, 90 Wn. App. at 177; *Puget Sound*, 123 Wn.2d at 292. Neither case involves the issue of whether contracting parties have the right to agree to modification of the contract terms in the event of assignment.

An assignment clause is a contract provision, and “[p]arties may incorporate in their contracts any provisions which are not illegal or violative of public policy.” *In re Marriage of Kinne*, 82 Wn.2d 360, 363, 510 P.2d 814 (1973). A tenant should be allowed to agree to a reasonable modification of the lease term on assignment, as long as that modification does not conflict with any provision of the MHLTA.

(3) As an Issue of First Impression, Parties Can Agree to Modify a Lease Term Upon Assignment Without Violating the MHTLA or the Public Policy Behind It

The Court of Appeals failed to address an important issue of first impression in Washington: do parties have the right under the MHLTA to agree to reasonable modifications of a lease term upon assignment? It was

to the tenants' benefit to receive a 25-year lease term. Had Little Mountain not been able to include the clause modifying the lease term, it is unlikely that it would have provided these money-losing leases at all.

In a case involving a strikingly similar issue, the California Court of Appeal has concluded an assignment clause mandating an *increase in rent upon assignment*, is a permissible restriction on assignment under California's Mobilehome Residency Act. In *Vance v. Villa Park Mobilehome Estates*, 36 Cal.App.4th 698, 42 Cal.Rptr.2d 723 (1995), mobile home park tenants challenged an assignment clause in their leases. The clause provided for a 10 percent increase in rent upon assignment of the lease to a third party. *Id.* at 703-04. The tenants argued that the increase in rent was in reality a transfer "fee" prohibited by California's Mobilehome Residency Law. *Id.*

The California Court of Appeals upheld the assignment clause increasing the rent upon transfer, because it was agreed to by the parties and was not prohibited by the law:

The homeowner may agree to conditions binding the successor-in-interest over the remaining term of the assignable lease. Fixing the rate of increase in advance gives desirable certainty to both the homeowner and the park operator. This lease gives the homeowner another advantage: the ability to terminate the lease upon sale of the mobilehome so as to release the homeowner of all further obligations under the lease. *The homeowner is free to weigh the consequences of the rental terms on the future*

*saleability of the mobilehome and future value of the assignable lease.*

*Id.* at 708 (emphasis added).

Like Washington's MHTLA, California's Mobilehome Residency Act requires a mobile home lease to be assignable. Cal. Civ. Code § 798.74. Yet in the California court's view, a reasonable, agreed-upon assignment modification of the lease provisions should be enforced. *Id.*

Here, a one- or two-year lease arguable creates a lower profit margin on resale of tenants' homes than the remainder of a 25-year lease. *However, the tenants received substantial benefit from their agreement to modify the lease term: a 25-year lease rent controlled lease.* Under the MHLTA, landlords are not required to tie rent increases to the consumer price index, nor offer lease terms longer than one year.

Also, like the assignment clause at issue in *Vance*, the clause here was not prohibited by the MHLTA. The MHLTA does not prohibit reasonable restrictions upon assignment, and says nothing about altering the assignee's lease term. In fact, the MHTLA itself imposes certain restrictions on assignment: a landlord has the right to reasonably refuse an assignee tenant. RCW 59.20.073.<sup>2</sup>

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<sup>2</sup> Thus the Court of Appeals is *demonstrably incorrect* in stating that "RCW 59.20.073(1) provides that tenants have the right to assign their rental agreements and does not contain any limitation on the right to do so." Slip op. at 12.

The assignment clause in the rental agreement at issue here also does not violate the MHLTA's provisions regarding the length of lease terms. The default length is one year. RCW 59.20.050.

The MHLTA's silence should be interpreted as Legislative acquiescence. In *McGahuey*, the Court of Appeals agreed that when the MHLTA was silent as to whether a landlord could transfer the obligation to pay for utilities to the tenant, but did contain general limitations on the landlord's right to provide utility services, express restriction a particular provision in a statute implied the exclusion of another:

While we recognize that one significant purpose of the MHLTA is to give heightened protection to mobile home tenants, there are two related reasons for rejecting the Tenants' interpretation of the statute. First and most obvious, it nowhere provides that a landlord may not increase or impose fees for services in addition to the rent. Rather, portions of the statute ensure that whatever alterations the landlord seeks must be equitable. ...Second, the only limitation on increases of any kind found in the MHLTA is the requirement discussed above that rental rates--not fees--be increased only upon lease expiration and three months' notice. Express mention of one thing in a statute implies the exclusion of another.

...By omitting any limit on assessing or raising fees or other charges, the statute has imposed no restrictions on them. So long as utility charges do not exceed the actual cost of the service and fees and charges are not retaliatory, the statute permits the landlord to impose them.

This is a practical approach for the Legislature to take. It recognized that mobile homes are difficult and expensive to move and, to protect tenants from the instability inherent in most rental arrangements, it provided for automatic renewal

and a long notice period for rent increases. But it did not require that all original lease terms remain in force through every automatic renewal because renewals could extend for countless years.

*McGahuey v. Hwang*, 104 Wn. App. 176, 182-83, 15 P.3d 672 (2001)

(citations omitted).

The offer of a 25-year rent-controlled lease also does not violate the public policy behind the MHTLA, as the Court of Appeals suggests. Slip op. at 12-13. In fact, a 25-year lease *fulfills* the public policy behind the MHTLA: to give seniors and low-income citizens stable, affordable housing. *Washington Real Property Deskbook* § 15.3 (3d ed. 1997). The lease offered by Little Mountain does just that, but asks for a modest concession in return: that this extraordinary contractual benefit be available only to current homeowners, and not their future assignees.

The Legislature has crafted specific provisions regarding what a mobile home lot lease can and cannot include. RCW 59.20.060. Yet it has not prohibited assignment clauses such as the one at issue here. As long as the lease is assignable, and the length of the new term is, as here, at least one year, the assignment clause does not violate the MHTLA. *McGahuey v. Hwang*, 104 Wn. App. 176, 182-83, 15 P.3d 672 (2001)

The Court of Appeals erred on this issue, and this Court should consider it.

(4) The Court of Appeals Misinterpreted the MHLTA and Contract Law on an Issue With Broad Public Import

When issues of first impression involve interpretation of laws that have a broad public impact, the issue cries out for resolution by this Court. *See, e.g., Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007) (whether statute governing overtime pay applied to hours worked by in-state drivers working some hours outside the state); *Blaney v. International Association of Machinists And Aerospace Workers, Dist.*, 151 Wn.2d 203, 87 P.3d 757 (2004) (whether WLAD entitles plaintiffs who prevail in discrimination lawsuits to an offset for the additional federal income tax consequences); *State v. Keller*, 98 Wn.2d 725, 657 P.2d 1384 (1983) (whether RCW 10.77.190(3) requires that the court find that an individual has *both* violated an express term of the conditional release *and* that he or she presents a substantial danger to others).

Here, in an unprecedented ruling, the Court of Appeals essentially concluded that any provision in a contract altering the contract terms upon assignment renders the contract unassignable. Slip op. at 12. The Court's interpretation is not supported by any language in the MHLTA, and could hamper parties' ability to freely contract in the future.

The Court of Appeals' decision represents a significant departure from contract law that is applicable to any contract dispute, regardless of

whether the MHLTA applies. Disputing parties could reasonably point to this decision in support of the proposition that any modification of contract terms upon assignment, even if reasonable and agreed-upon, renders the contract “unassignable” and thus constitutes an unreasonable restriction on the right to transfer. The decision also closes the door for parties who truly want to incorporate reasonable, mutually beneficial provisions into their MHLTA leases.

The court’s decision is ambiguous: can common law contract principles apply to MHLTA leases or not? How do future courts handle MHLTA lease provisions that are contractually permissible but are not addressed directly in the MHLTA? The Court of Appeals’ decision is unclear.

The MHLTA is an important statutory scheme upon which the public relies to form and interpret lawful lease agreements regarding manufactured and mobile homes. Parties need clarification from this Court on the important issue of first impression raised in this case. The issue is not narrow: whether or not parties are free to rely on common contract law within the bounds of the MHLTA affects a large number of contracts currently existing and to be executed in the future. This Court’s decision will resolve an issue with import beyond the facts this case.

5. The Court of Appeals' Interpretation of RCW 59.20.073, RCW 59.20.050, and RCW 59.20.090 Would Violate Article I, § 16 of Washington's Constitution.

Article I, § 16 states in pertinent part that:

No private property shall be taken or damaged for public or private use without just compensation having been first made....

In *Manufactured Housing*, the MHCW challenged Chapter 59.23 RCW, which required mobile home park owners to allow tenants a right of first refusal on any sale of the park to a third party, and to sell to the tenants if they could make an offer equal to the third-party offer. *Id.* at 351-52. The statute also required the owners to provide notice to the tenants and wait 30 days before closing any third party sale. *Id.*

This Court ultimately determined that RCW 59.23's restrictions on sale constituted a private, not public, use of private property. *Id.* at 362. Although the Court acknowledged that there might be some public *benefit* to depriving property owners of the unfettered right to sell their property, public benefit does not equate with public use. *Id.* As such, it was irrelevant whether the park owners were properly compensated for the taking. *Id.*

The *Manufactured Housing* court determined that the right of first refusal was a property interest because such interests are *broadly defined*.

Citing *Guimont v. Clarke*, 121 Wn.2d 586, 595, 854 P.2d 1 (1993), the Court noted that “‘the right to possess, to exclude others, or to dispose of property’ are ‘fundamental attribute[s] of property ownership.’” 142 Wn.2d at 364. In particular, the right to dispose of property in a manner the owner pleases is key. *Id.*

The MHLTA as interpreted by the Court of Appeals here would infringe property rights much more aggressively than RCW 59.23 did, and presents an even clearer case of an unconstitutional taking for private use under *Manufactured Housing*. That case recognizes “that the right to possess, to exclude others, or to dispose of property are fundamental attributes of property ownership.” 142 Wn.2d at 364. By prohibiting owners from entering into leases without offering the remainder of any 25-year term, the MHLTA and the Court of Appeals took fundamental private property rights “to possess, to exclude others, or to dispose of property.”

Rather than recognize a sensible balance between important protections for tenants of manufactured and home parks, and the economic realities of trying keep such parks in business, the Court of Appeals’ interpretation of the MHLTA transfers property rights from the park owner to the tenant.

RCW 59.20.050(1) as interpreted by the Court of Appeals impairs a property owners’ right to use their property by mandating one-year

leases, and according to the Court of Appeals, mandating the assignment of the remainder of any 25-year lease term. Park owners are prohibited from negotiating the length of a lease term with tenants, or doing exactly what the original owners did in this case: offer a longer term lease which far exceeds the intent of the MHLTA, but only for the original tenants.

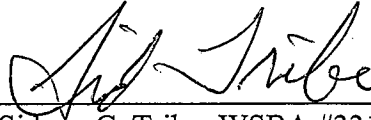
## VI. CONCLUSION

The Court of Appeals' published opinion has vastly constrained the bargaining power of both tenants and landlords and, in a case of first impression, misinterpreted the provisions of the MHLTA. The Court of Appeals discarded an agreed-upon contractual provision that benefited and burdened each party, despite the fact that no law or public policy prohibited it.

This case presents serious questions of broad public import on an issue of first impression. The Court of Appeals' opinion conflicts with ample, long-standing and settled contract law precedent, both from this Court and from other courts of appeal. Review is merited under RAP 13.4.

Dated this 15<sup>th</sup> day of October, 2008.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sid Tribe", is written over a horizontal line.

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Attorneys for Petitioner

# APPENDIX

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

LITTLE MOUNTAIN ESTATES TENANTS )  
ASSOCIATION, a Washington Non-profit )  
corporation, as assignee, JERRY JEWETT )  
VIRGINIA HADLEMAN, MARIE )  
McCUTCHIN, and WES WALTON, on )  
behalf of themselves and classes of )  
similarly situated persons )

Appellants, )

v. )

LITTLE MOUNTAIN ESTATES MHC LLC, )  
a Limited Liability Company, PEREGRINE )  
HOLDINGS, LLC, KEVIN A. WARE and )  
KARI M. WARE, husband and wife and the )  
marital community composed thereof, )

Respondents. )

No. 57810-3-I

UNPUBLISHED OPINION

FILED: **July 21, 2008**

SCHINDLER, C.J.—The Manufactured/Mobile Home Landlord Tenant Act (MHLTA), chapter 59.20 RCW, governs the legal rights and obligations between mobile home park landlords and tenants. Under the MHLTA, a tenant has the right to assign a rental agreement. A rental agreement cannot contain any provision that waives a tenant's rights under the MHLTA, and if a provision in the rental agreement conflicts with the MHLTA, it is unenforceable. The "Little Mountain Estates 25 Year Lease Agreement," contains a rent adjustment formula tied to the Consumer Price Index (CPI) and a provision stating that when a tenant assigns a lease to a new owner,

the remainder of the tenant's 25-year term is automatically converted to a one-year or a two-year term. We reject the tenants' argument that the court erred in enforcing the rent adjustment formula in the lease agreement. However, because the tenants had the right to assign their leases under the MHLTA and could not waive that right in the lease agreement, we reverse the trial court's determination that as a matter of law the conversion clause in the 25-year lease agreement did not violate the MHLTA. We also remand to address the tenants' Consumer Protection Act (CPA), chapter 19.86 RCW, claim.

### FACTS

In August 2002, the Little Mountain Estates Tenants Association and tenants Jerry Jewett, Virginia Haldeman, Marie McCutchin, and Wes Walton (collectively "the tenants") sued Little Mountain Estates Manufactured Home Community, LLC (LME).

LME was built in the early 1990s as an upscale, gated, 120-lot manufactured housing community for older adults. LME struggled to find tenants because of the economic and political instability in the early 1990s. In an effort to attract tenants, LME entered into a marketing agreement with a manufactured homes dealer, Lamplighter Homes (Lamplighter). From 1990 to 1997, LME offered a 25-year lease with a maximum annual rent increase tied to the Consumer Price Index (CPI) to tenants who either purchased a model home from Lamplighter or purchased and moved a new manufactured home to LME. LME and Lamplighter advertised the 25-year lease through radio, brochures and other written advertisements. Some of the written

advertisements state that the details of the rental agreement would be "specified in the lease."<sup>1</sup>

The new manufactured homes purchased by the tenants cost between \$60,000 and \$80,000. To "[i]nsure quality and overall community appearance" of LME, the tenants also had to comply with the requirements of the "Little Mountain Estates Park Amenity Package" prior to moving in. The mandatory amenity package included requirements to install concrete slabs, a concrete sidewalk to the street or a driveway, "pit set"<sup>2</sup> the manufactured home on the lot, install sewer, water, and electrical connections, and complete landscaping according to the LME specifications. The cost of the improvements required by the mandatory amenity package ranged from \$15,000 to \$18,000.

It is undisputed that the tenants did not sign written lease agreements before moving in. It is also undisputed that after moving in, each of the tenants and LME entered into the "Little Mountain Estates 25 Year Lease Agreement." The lease unequivocally provides a tenancy of 25 years for a designated space at LME. The lease also sets forth the amount of rent due each month for the first year. Thereafter, the amount "shall be subject to an annual formula per Attachment A." For example, the lease signed by Jerry and Betty Jewett provides:

1. DESCRIPTION OF PREMISES: Landlord hereby leases to Tenant that certain space in the County of Skagit, State of Washington described as space number 38, Little Mountain Estates, Skagit County, Washington.

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<sup>1</sup> Exhibit 16.

<sup>2</sup> "Pit setting" requires more excavation before setting the home than a "ground set" mobile home and is more expensive.

2. TERM: The term of this tenancy **shall be twenty-five years** commencing on 12-1-94, and continuing through Nov. 30, 2019.
3. RENT: Tenant shall pay to Landlord \$310.00 per month as rent; through Nov. 30, 1995 and thereafter shall be subject to an annual adjustment formula per Attachment A. . . .<sup>3</sup>

The assignment provision in the LME 25-Year Lease Agreement states that the lease is assignable subject to the limitations in "Attachment B."

ASSIGNMENT; SUBLETTING: This lease is assignable, providing that such assignment conforms with the limitations and language in Attachment 'B'. Subletting the manufactured home, the lot space, or any part thereof is not permitted.

The one-page attachment to the 25-year lease, titled "Little Mountain Estates," includes Attachment A and Attachment B. Attachment A is clearly labeled "RENT ADJUSTMENT FORMULA" and is set forth first. It contains a description of the Consumer Price Index (CPI) and the formula for calculating rent adjustments. Halfway down the page is the heading "Attachment 'B.'" Attachment B does not have a similar label to explain its purpose. Attachment B states that the tenant can assign the lease to a new owner subject to the conditions set forth in five different subsections, subsections (a) to (e).

Subsection (a) of Attachment B requires the tenant to pay all outstanding rent, taxes, and fees prior to transferring the lease. Subsection (b) addresses the requirements for the landlord's approval of the assignment. Subsection (c) states that upon assignment, the lease agreement is automatically converted to a one-year or a two-year lease. Subsection (d) states that the assignment provision applies to all

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<sup>3</sup> Emphasis added.

transfers and subsection (e) allows LME to assign its interest in the lease to a third party purchaser. Attachment B provides:

This lease shall be assignable by tenant only to a person to whom Tenant sells or transfers title to the manufactured home on said lot subject to the following:

(a) All outstanding taxes, rents and/or fees owed by the tenant must be paid prior to such transfer.

(b) Subject to the approval of Landlord after fifteen (15) days written notice by Tenant of such intended assignment. Landlord shall approve or disapprove of the assignment of this lease on the same basis that Landlord approves or disapproves of any new tenant or manufactured home.

(c) Upon assignment by Tenant of Tenant's leasehold interest in the homesite, this rental agreement shall automatically convert to a one (1) year lease beginning on the effective date of the assignment. The new monthly rent shall be charged by Landlord following the most recent rent increase for the park proceeding the effective date of the assignment.

(d) Assignment as defined in this paragraph shall apply to all voluntary transfers and involuntary transfers of Tenant, including a transfer between married tenants pursuant to a divorce decree, separation agreement, or similar document or order, or a transfer in a bankruptcy or other insolvency proceeding.

(e) Landlord shall assign its interest in this agreement to any third party who purchases the park.

One of the owners of LME, Paul Ware, testified that the 25-year lease was a means to attract tenants, but because the average age of the tenants who moved into LME was 70, LME anticipated that most of the tenants would only actually live at the mobile home park for approximately five years.

Q. [I]n order to stem the loss of money, the 25-year lease was created as an inducement?

A. Yes.

Q. And at the time that you created that inducement you knew that the average age of the people coming in was roughly 70?

A. Yes.

Q. And you knew that their average length of stay was about five years?

A. Yes.

Q. And you knew that they would have to spend anywhere between \$15,000 and \$18,000 to set up their home?

A. Yes.

According to Ware, the reason for the unadvertised assignment conversion clause in Attachment B was to maximize the owners' profits when the tenants sold their homes.

[T]he reason we did that was because at a point, you know, as the 25-year leases – if they stayed there 25-years, God loves them, we're glad that they lived that long. But if they didn't and they moved out, those leases would convert to a one-year lease, and eventually we would start getting a return for our investments.

The tenants' lawsuit against LME asserted that the lease agreement violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), chapter 59.20 RCW, and the Consumer Protection Act (CPA), chapter 19.86 RCW. The lawsuit alleged that many of the tenants were unaware of the assignment conversion clause in Attachment B, the conversion of their 25-year tenancy to a one-year or two-year term reduced their ability to sell their homes, the rent adjustment formula in Attachment A was unenforceable, and LME had arbitrarily increased the rent in violation of the lease agreement. The tenants sought declaratory and injunctive relief, monetary damages, and attorney fees and costs.

After a series of summary judgment motions and a nine-day trial, the court enforced the assignment conversion clause and, with some modifications to the rent adjustment formula, enforced the other terms of the lease. In one of the early summary judgment motions, the court ruled as a matter of law, that the provision in

Attachment B automatically converting the 25-year lease to a one-year or two-year lease upon assignment did not violate the MHLTA or the CPA.

(1) Plaintiffs' claims that paragraph 6 of the 'Little Mountain Estates 25 year Lease agreement' and its 'Exhibit B' violate the mobile home/manufactured landlord tenant act (RCW 59.20. et seq.) or the Consumer Protection Act (RCW 19.86 et seq.) are dismissed with prejudice; and

(2) Paragraph 6 of the "Little Mountain Estates 25 Year Lease Agreement" and its "Exhibit B" are not prohibited by the Mobile Home/Manufactured Home Landlord Tenant Act (RCW 59.20 et seq.).<sup>4</sup>

Following trial, the court entered extensive findings of fact and conclusions of law. The court concluded that even though LME violated the MHLTA by allowing tenants to move in without first signing a lease agreement, the tenants were bound by the terms of the 25-year lease that they voluntarily entered into after moving into LME. But because the court concluded that the CPI rent formula in Attachment A did not make sense and was ambiguous, the court modified the formula. Otherwise, the court ruled that the lease was enforceable. In the conclusions of law, the court reiterated its previous ruling that the assignment conversion clause in Attachment B did not violate the MHLTA or the CPA.<sup>5</sup> The tenants appeal.

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<sup>4</sup> The court later dismissed park owners Kevin and Kari Ware in part, several of the tenants' causes of action, and the tenants' CPA and retaliation claims.

<sup>5</sup> "The provision contained in the 25-Year Lease Agreement which converted the 25-[y]ear term of the Lease (to a one or two-year term upon assignment of the Lease) does not violate RCW 59.20.073, or any other provision of [c]hapter 59.20 RCW." Findings of Fact and Conclusions of Law 7.

### ANALYSIS

The tenants assert that the trial court erred in ruling on summary judgment that the conversion clause in Attachment B does not violate the MHLTA or the CPA. The tenants also assert that the trial court erred in enforcing the rent adjustment provision in Attachment A because the terms materially altered the terms of the offer LME made to the tenants in its advertisements.<sup>6</sup>

We review summary judgment de novo and engage in the same inquiry as the trial court. Heath v. Uruga, 106 Wn. App. 506, 512, 24 P.3d 413 (2001). Summary judgment is proper if the pleadings, depositions, answers, and admissions, together with the affidavits, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). We view the facts and reasonable inferences in a light most favorable to the nonmoving party. Michak v. Transnation Title Ins. Co., 148 Wn.2d 788, 794, 64 P.3d 22 (2003). Summary judgment is appropriate if, in view of all the evidence, reasonable persons could reach only one conclusion. Hansen v. Friend, 118 Wn.2d 476, 485, 824 P.2d 483 (1992). Manufactured/Mobile Home Landlord Tenant Act

The tenants contend that the trial court erred in ruling on summary judgment that the provision in Attachment B converting the term of the lease from a 25-year

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<sup>6</sup> Although the tenants also contend that the trial court erred by dismissing park owners, Kevin and Kari Ware, ruling that LME's unacknowledged leases did not violate the statute of fraud, granting partial summary judgment as to a CPA violation regarding the security gate, granting partial summary judgment dismissing retaliation claims, and excluding the tenants' expert witness, they fail to argue these assignments of error in their brief. Because the tenants do not support these assignments of error with argument, consideration is waived on appeal. RAP 10.3(a)(6); Bercier v. Kiga, 127 Wn. App. 809, 824, 103 P.3d 232 (2004). In addition, to the extent the tenants do not make arguments related to the assignments of error to the court's findings and conclusions, those arguments are also waived. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

lease to a one-year or two-year term upon assignment of the lease to a new owner did not violate the MHLTA or the CPA. The tenants assert that because a tenant has the statutory right under the MHLTA to assign the lease, and the lease cannot contain a provision that requires the tenant to waive or forego a statutory right, the conversion clause provision is unenforceable. LME asserts that the lease provision complies with the MHLTA because the tenants have the right to assign the lease, but the MHLTA does not give the tenants the right to assign the remainder of the term of the lease.

Statutory interpretation is a question of law we review de novo. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). If the statute's meaning is plain on its face, we give effect to that plain meaning. Campbell & Gwinn, 146 Wn.2d at 9-10. We look to the legislative enactment as a whole to determine the meaning. State v. Pac. Health Ctr, Inc., 135 Wn. App. 149, 159, 143 P.3d 618 (2006). To properly interpret a statute, courts must read statutory provisions together, not in isolation. Judd v. Am. Tel. & Tel. Co., 152 Wn.2d 195, 203, 95 P.3d 337 (2004), rev. denied, 162 Wn.2d 1002, 175 P.3d 1092 (2007).

A statute is ambiguous if it has two or more reasonable interpretations, but not "merely because different interpretations are conceivable." Cerrillo v. Esparza, 158 Wn.2d 194, 201, 142 P.3d 155, rev. denied, 156 Wn.2d 1010, 132 P.3d 146 (2006). If a statute is ambiguous, we may resort to legislative history. Campbell & Gwinn, 146 Wn.2d at 12. "Ultimately, in resolving a question of statutory construction, this court will adopt the interpretation which best advances the legislative purpose." Bennett v. Hardy, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990), quoting, In re R., 97 Wn.2d 182, 187, 641 P.2d 704 (1982).

The MHLTA determines the legal rights, remedies, and obligations arising from a rental agreement between a mobile home lot tenant and the mobile home park landlord. RCW 59.20.040. The legislative purpose in enacting the MHLTA was to regulate and protect mobile home owners by providing a stable, long-term tenancy for home owners living in a mobile home park. Holiday Resort, 134 Wn. App. at 224.

According to legislative findings,

... [it] is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market.

RCW 59.22.010(2). The legislature also found that "many homeowners who reside in mobile home parks are also those residents most in need of reasonable security in the siting of their manufactured homes." Former RCW 59.23.005 (1994).

Here, there is no dispute that, according to the signed lease agreements, the tenants have the right to a 25-year lease. Additionally, it is undisputed that the tenants have the unequivocal right to sell their mobile homes under RCW 59.20.070(1). RCW 59.70.070(1) provides that:

**Prohibited acts by landlord.** A landlord shall not:

- (1) Deny any tenant the right to sell such tenant's mobile home, manufactured home, or park model within a park or require the removal of the mobile home, manufactured home, or park model from the park because of the sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073.

RCW 59.20.073(1) provides that “[a]ny rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model.” The MHLTA also expressly states that any executed rental agreement between the landlord and tenant “shall not contain any provision . . . [b]y which the tenant agrees to waive or forego rights” under the MHLTA. RCW 59.20.060(2)(d). In addition, RCW 59.20.020 imposes an obligation to act in good faith,<sup>7</sup> and under RCW 59.20.040 a rental agreement “shall be unenforceable to the extent of any conflict with any provision of this chapter.”

LME argues that as long as the landlord allows the tenant to assign the rental agreement, nothing in the statute prohibits the landlord from then converting the remaining 25-years lease term to a one-year or a two-year term. LME also asserts that because tenants voluntarily signed the lease, the tenants are bound by their agreement under general principles of contract law. But this argument ignores the MHLTA, which is the controlling law in this case.

The trial court also read the statute narrowly to conclude, the provision contained in the 25-Year Lease Agreement which converted the 25-Year term of the lease (to a one or two-year term upon assignment of the lease) does not violate RCW 59.20.073, or any other provision of Chapter 59.20 RCW.

We reject LME’s narrow interpretation of the MHLTA and RCW 59.20.073(1).

This court’s primary goal in interpreting statutes is “to ascertain and give effect to legislative intent.” Pac. Health Ctr., 135 Wn. App. at 158-59. The plain language of

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<sup>7</sup> “Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.” RCW 59.20.020.

RCW 59.20.073(1) provides that tenants have the right to assign their rental agreements and does not contain any limitation on the right to do so. When the plain language of the statute is subject to more than one reasonable interpretation, we look to the principles of statutory construction, legislative history, and case law. Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 808, 16 P.3d 583 (2001). And when enacting a statute, we presume the legislature knows the existing state of the case law. Woodson v. State, 95 Wn.2d 257, 266-62, 623 P.2d 683 (1980).

The MHLTA does not define "assignment." But the general rule under common law with respect to the assignment of contract rights is that such rights may be freely assigned unless prohibited by statute. Federal Fin. Co. v. Gerard, 90 Wn. App. 169, 177, 949 P.2d 412 (1998). An assignee of a contract "steps into the shoes of the assignor" and has all the rights of the assignor, including all applicable statutory rights. Puget Sound Nat'l Bank v. State Dep't of Revenue, 123 Wn.2d 284, 292, 868 P.2d 127 (1994) quoting, Estate of Jordan v. Hartford Accident & Indem. Co., 120 Wn.2d 490, 495, 844 P.2d 403 (1993). Because RCW 59.20.073(1) states that "any rental agreement shall be assignable," and the rental agreements here were for 25-year leases, we conclude that the unambiguous language of RCW 59.20.073(1) supports the conclusion that the tenants had the right to assign the remaining term of the 25-year lease.

Construing RCW 59.20.073(1) to mean the tenants have the right to assign the remaining term of their rental or lease agreement is also consistent with the legislative intent to protect mobile home owners.

In addition, Washington courts review waiver clauses strictly and enforce them only if their language is sufficiently clear. Chauvlier v. Booth Creek Ski Holdings, Inc., 109 Wn. App. 334, 339-40, 35 P.3d 383 (2001). And any agreement to waive a right under the MHLTA must be in a writing that is separate from the lease agreement. Holiday Resort Cmty. Ass'n v. Echo Lake Assoc., LLC, 134 Wn. App. 210, 225, 135 P.3d 499 (2006) rev. denied, 160 Wn.2d 1019, 163 P.3d 793 (2007).

Here, because there is no dispute that the lease agreement required the tenants to give up their right to assign the remainder of their 25-year lease, the provision is an unenforceable waiver of the tenants' rights under the MHLTA. We conclude that the assignment clause converting the 25-year lease to a one-year or two-year lease is unenforceable because it conflicts with the MHLTA.

#### Rent Adjustment Formula

The tenants also contend the trial court erred by enforcing the rent adjustment formula in Attachment A because it materially altered the terms of the offer LME made to the tenants in its brochures and advertisements. LME asserts that the advertising materials did not constitute an offer and the written agreement controls. We agree with LME.

An implied contract occurs when, through a course of dealing and common understanding, the parties show a mutual intent to enter into a contract. Harberd v. City of Kettle Falls, 120 Wn. App. 498, 516, 84 P.3d 1241 (2004). Generally, an advertisement is not an offer. 25 David K. DeWolf & Keller W. Allen, Washington Practice: Tort Law and Practice, §2:12 (2d ed. 2007). Here, there was no mutual intent to enter into an oral agreement. The record reveals that Little Mountain

intended the lease agreement to control, as demonstrated by the fact that the advertising materials explicitly stated "[t]he details of this are specified in the lease."

Enforceability of Lease Attachments

The tenants contend that even if the written lease is enforceable, they did not agree to the terms of Attachment A and B which were not attached to the lease when they were executed. We review the trial court's decision in a bench trial to determine whether challenged findings are supported by substantial evidence and whether the findings support the conclusions of law. Dorsey v. King County, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988). Findings of fact are considered verities on appeal as long as they are supported by substantial evidence in the record. In re Marriage of Thomas, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991). Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true. Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). The tenants did not assign error to the following findings of fact:

20. The Lease provided that the 25-Year term would convert to a one or two-year term upon the 25-Year Residents' sale of their home, and assignment of the lease.
21. The Lease provided that a certain rent would be charged for the first year of the Lease, and that periodic annual adjustments to the rent would be made as provided by the Lease's 'Attachment A.'

Because these findings specifically provide that the terms in Attachment A and B were part of the lease the tenants signed, we reject the argument that the lease did not include the attachments.

Consumer Protection Act

The tenants also assert that LME's violation of the MHLTA violated the CPA. LME contends that the lease did not violate the CPA because it did not mislead the public.

The purpose of the CPA is to protect citizens from unfair and deceptive trade and commercial practices. Stephens v. Omni Insurance Co., 138 Wn. App. 151, 170, 159 P.3d 10 (2007), rev. granted, 2008 LEXIS 284 (Apr. 1, 2008). To show that there is a violation of the CPA, the tenants must prove five elements: "(1) unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) public interest impact, (4) injury to plaintiff in his or her business or property, (5) causation." Omni Insurance, 138 Wn. App. at 166. The tenants' failure to establish any of the elements is fatal to their CPA claim. Holiday Resort, 134 Wn. App. at 225.

In Holiday Resort, we addressed a similar issue and held that even though the rental agreement violated the MHLTA, whether the violation had the capacity to deceive a substantial portion of the public was a question of fact. Holiday Resort, 134 Wn. App. at 226-27. Here, because the court did not reach the question of whether the tenants could prove a violation of the CPA, we remand.

Attorney Fees

Both parties request an award of attorney fees based on RCW 59.20.110. RCW 59.20.110 provides: "[i]n any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs." The lease agreement between the parties also provides attorney fees to the prevailing party in any action to enforce a provision of the lease. Additionally, under RAP 18.1, the prevailing party is

entitled to attorney fees on appeal. Gillette v. Zakarison, 68 Wn. App. 838, 846 P.2d 574 (1993). As the prevailing party, the tenants are entitled to reasonable attorney fees upon compliance with Rap 18.1.

CONCLUSION

We affirm in part, reverse in part, vacate the trial court's award of attorney fees, and remand.<sup>8</sup>

Schindler, CT

WE CONCUR:

Appelwick, J.

Ajda, J.

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<sup>8</sup> Because we remand, we need not address the tenants' other arguments.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

LITTLE MOUNTAIN ESTATES TENANTS )  
ASSOCIATION, a Washington Non-profit )  
corporation, as assignee, JERRY JEWETT )  
VIRGINIA HADLEMAN, MARIE )  
McCUTCHIN, and WES WALTON, on )  
behalf of themselves and classes of )  
similarly situated persons )

Appellants,

v.

LITTLE MOUNTAIN ESTATES MHC LLC, )  
a Limited Liability Company, PEREGRINE )  
HOLDINGS, LLC, KEVIN A. WARE and )  
KARI M. WARE, husband and wife and the )  
marital community composed thereof, )

Respondents.

No. 57810-3-I

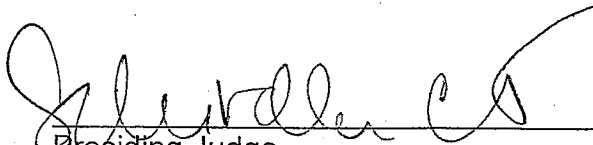
ORDER GRANTING  
RESPONDENTS' MOTION TO  
PUBLISH

Respondents, Little Mountain Estates MHC LLC, a Limited Liability Company, filed a motion to publish the opinion filed on July 21, 2008. The appellants filed a response stating they did not oppose the motion. A majority of the panel has determined that the motion should be granted; Now, therefore, it is hereby

ORDERED that respondents' motion to publish the opinion is granted.

DATED this 15<sup>th</sup> day of September, 2008.

FOR THE PANEL:

  
Presiding Judge

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2008 SEP 15 AM 10:50

DECLARATION OF SERVICE

On said day below I deposited in the U. S. mail a true and accurate copy of the following document: Petition for Review, Cause No. 57810-3-I, to the following:


Walter H. Olsen, Jr.  
Troy R. Nehring  
Olsen Law Firm PLLC  
604 W. Meeker Street, Suite 101  
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Philip J. Buri  
1601 F Street  
Bellingham, WA 98225

Original sent by ABC Legal Messengers for filing with:  
Court of Appeals, Division I  
Clerk's Office  
600 University Street  
Seattle, WA 98101

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: October 15, 2008, at Tukwila, Washington.

  
Paula Chapler, Legal Assistant  
Talmadge/Fitzpatrick